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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/617,706	07/14/2003	Howard E. Rhodes	M4065.0100/P100-B	3719
24998	7590	08/24/2004	EXAMINER	
DICKSTEIN SHAPIRO MORIN & OSHINSKY LLP			QUACH, TUAN N	
2101 L STREET NW			ART UNIT	
WASHINGTON, DC 20037-1526			PAPER NUMBER	
			2814	

DATE MAILED: 08/24/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 10/617,706	Applicant(s) RHODES, HOWARD E.	
	Examiner Tuan Quach	Art Unit 2814	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 17-70 and 87-128 is/are pending in the application.
- 4a) Of the above claim(s) 17-70 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 87-128 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 14 July 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>7/14/03</u> . | 6) <input type="checkbox"/> Other: ____.  |

**DETAILED ACTION**

Applicant is requested to update the information regarding parent application 09/777,890, namely inserting "now U.S. Patent 6,611,013."

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 87-128 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-32 of U.S. Patent No. 6,611,013. Although the conflicting claims are not identical, they are not patentably distinct from each other because of the following reasons.

Instant claims 87-101 correspond to claims 1-15 of '013 wherein instant claim 87 recite a substrate doped to a first conductivity type and photocollection region doped to a second conductivity type; these are not patentably distinct from claim 1 of '013 which recite the same structure without excluding the first conductivity type and the second conductivity type, respectively thus would encompass the conductivity type now claimed; such would have been further

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obvious as correspond to the desired doping necessary for the device in question and as such doping of the appropriate conductivity type would have been obvious and apparent to one skilled in the art.

Instant claims 102-116 essentially correspond to claims 16-30 of '013 wherein instant claim 102 recite a substrate as delineated above, namely, doped to a first conductivity type and photocollection region as delineated above, namely doped to a second conductivity type; these are not patentably distinct from claim 16 of '013 for the same reason delineated above, which recite the same structure without excluding the first conductivity type and the second conductivity type, respectively thus would encompass the conductivity type now claimed; such would have been further obvious as correspond to the desired doping necessary for the device in question and as such doping of the appropriate conductivity type would have been obvious and apparent to one skilled in the art.

Instant claims 117 and 118 correspond to claims 31 and 32 of '013 for the same reasons.

Instant claim 119 corresponds to different combination of subset of claims 16 and 26-28 of '013 wherein instant claim 119 recite the substrate, e.g., claim 16 line 4, wherein the transistor in claim 16 line 8 now correspond to the transfer gate and reset gate, such transistors were claimed in claim 26-28.

Instant claims 120-128 correspond to the same opaque conductive materials claimed in claims 17-25 of '013.

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The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Guidash and Kozlowski et al. are made of record.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to examiner Quach whose telephone number (571)272-1717. The examiner can normally be reached on M - F from 7 to 4.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor Wael Fahmy can be reached on (571)272-1705. The fax phone number for the organization where this application or proceeding is assigned is (703)872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (571)272-1562.



Tuan Quach  
Primary Examiner